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When to make a Will

Will writing is one of the most important things you can do for your family and we therefore recommend that everybody should:-

- Write a Will that is valid and meets all the legal requirements.
- Update their Will. We recommend that you review your Will regularly and if your personal circumstances have changed you should either write a new Will or a Codicil to reflect the change in your circumstances.

Why it is important to make a Will?

It is important for you to make a Will whether or not you consider you have many possessions or much money. It is important to make a Will because:-

- if you die without a Will, the intestacy rules dictate how your money, property or possessions should be allocated. This may not be the way that you would have wished. Your spouse or partner may not inherit everything you leave.
- unmarried partners or partners who have not entered into a civil partnership will not automatically inherit from each other unless there is a Will. The death of one partner may create serious financial problems for the remaining partner.
- if you have young children, you will need to make a Will so that arrangements can be made if both parents die.
- it may be possible to safeguard part of your property from being used for nursing home fees if one spouse lives

in a residential home and the other spouse dies.

- if your circumstances have changed it is important that you make a Will to ensure that your money and possessions are distributed according to your wishes. For example, if you marry this may make your previous Will invalid.

What should be included in a Will?

You should consider such things as:-

- what assets you have, for example, property, savings, occupational and personal pensions, insurance policies, bank and building society accounts and shares.
- who you want to benefit from your Will. You should make a list of all the people to whom you wish to leave money or possessions. These people are known as beneficiaries. You also need to consider whether you wish to leave any money to charity.
- who should look after any children under the age of 18. This will involve the appointment of a guardian or guardians.
- who is going to administer the estate and carry out your wishes as set out in the Will. These people are known as the executors and trustees.
- Questionnaire – this may help you to decide upon your wishes.

Who are the executors and trustees?

Executors are the people who will be responsible for carrying out your wishes and for administering the estate. They will have to collect together all the assets of the estate, deal with all the paperwork and pay

Contacts

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all the debts, taxes, funeral and administration costs out of money in the estate. They will need to pay any gifts and transfer any property to beneficiaries. Once they have completed the administration of the estate and if there are trusts arising from the Will, they will hold assets for the benefit of beneficiaries. The executors are then known as trustees.

Who to choose as executors?

It is not necessary to appoint more than one executor although it is advisable to do so, for example, in case one of the executors dies before you. It is common to appoint two, but up to four executors can take on responsibility for administering the Will after a death. The people most commonly appointed as executors are relatives, friends or Solicitors.

It is important to choose executors with considerable care since their job involves a great deal of work and responsibility. You should consider approaching anyone you are thinking of appointing as an executor to see if they will agree to take on the responsibility. If someone is appointed who is not willing to be an executor, they have a right to refuse to act.

If an executor dies, any other surviving executor(s) can deal with the estate. If there are no surviving executors, legal advice should be sought.

A Will includes the following clauses

- Revocation – as soon as the Will is signed all previous Wills are revoked and are therefore no longer valid.
- Appointment of executors and trustees.
- Appointment of guardians.
- Gifts – you should consider whether you wish to leave a sum of money or specific item to any beneficiary. Normally these gifts are free of inheritance tax and if there is any tax to pay it is payable from the residuary estate.
- Trusts – sometimes Wills include trusts. These could be discretionary trusts, life interest trusts or

accumulation and maintenance trusts. Trusts are used to protect part of your estate and the beneficiaries do not receive the gifts outright. The assets in the trust may be payable to the beneficiaries at the discretion of the trustees (this is a discretionary trust) or held on life interest for the benefit of a beneficiary to use during their lifetime (life interest trust) or to provide for minor beneficiaries' interests in the estate to be held for them until they attain the age of 18 or more (accumulation and maintenance trusts).

- Residuary estate – the residuary estate means all the assets in the estate after the payment of all legacies, outstanding bills, funeral expenses and taxes. Whatever is left after such payments is called the residuary estate.

Normally the residuary estate is left to the surviving spouse if there is one but you also need to consider what is to happen if your spouse has died before you.

If the estate is then divided between a number of beneficiaries, is it to be divided equally between them or by percentages? You also need to consider what would happen if those named beneficiaries died before you. Would you wish their share of the estate to go to their children or to the other remaining beneficiaries?

- Administrative clauses – the Will will also include administrative powers to enable the executors and trustees to administer the estate as efficiently as possible.
- Finally, the Will includes the signing clauses. It must be signed in the presence of two independent witnesses who also sign and add their name, address and occupation. Please remember that a beneficiary or their spouse or partner must not witness the Will as if they do the Will is still valid but the beneficiary will not be able to inherit under the Will.



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As soon as the Will is signed and witnessed it is complete.

Change of circumstances

When a Will has been made, it is important to keep it up to date and to take account of changes in circumstances. It is advisable for you to reconsider the contents of a Will regularly to make sure that it still reflects your wishes. The most common changes of circumstances which affect a Will are:-

- getting married, remarried, or registering a civil partnership.
- getting divorced, dissolving a civil partnership or separating.
- the birth or adoption of children, if you wish to add these as beneficiaries in a Will.

How to change a Will

You may want to change your Will because there has been a change of circumstances. You must not do this by amending the original Will after it has been signed and witnessed. Any obvious alterations on the face of the Will are assumed to have been made at a later date and so do not form part of the original legally valid Will.

The only way you can change a Will is by making:-

- A Codicil to the Will; or a new Will.

A Codicil is a supplement to a Will which makes some alterations but leaves the rest of the Will intact. This might be done, for example, to increase a cash legacy, change an executor or guardian named in a Will, or to add beneficiaries.

A Codicil must be signed by the person who made the Will and be witnessed in the same way as a Will. However, the witnesses do not have to be the same as for the original Will.

There is no limit to how many codicils can be added to a Will, but they are only suitable for very straight forward changes. If a complicated change is involved, it is usually advisable to make a new Will.

Making a Will

If you wish to make major changes to a Will, it is advisable to make a new one. The new Will should begin with a clause stating that it revokes all previous Wills and Codicils. The old Will should be destroyed. Revoking a Will means that the Will is no longer legally valid.

Destroying a Will

If you want to destroy a Will, you must burn it, tear it up or otherwise destroy it with the clear intention that it is revoked. There is a risk that if a copy subsequently reappears (or bits of the Will are reassembled), it might be thought that the destruction was accidental. You must destroy the Will yourself or it must be destroyed in your presence. A simple instruction alone to an executor to destroy a Will has no effect. If the Will is destroyed accidentally, it is not revoked and can still be declared valid.

What next?

If you have not made a Will before and wish to do so or wish to update your existing Will then please contact us at one of our offices to arrange an appointment to discuss your particular circumstances. We will then take your instructions and prepare a draft Will for your approval. When you are satisfied with the draft Will, we will prepare the final version for you to sign. You can then either attend our offices for signing or we can send the document for you to sign at home after which we will check that the Will has been signed correctly. Once you have made your Will it can be stored at our offices for safekeeping at no extra charge to you and we will then give you a copy of the signed document for your own records.

And afterwards...

You should review your Will periodically to ensure that it remains relevant to your circumstances.



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